

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company (U 39 M) for Authority Pursuant to Public Utilities Code Section 851 to Grant an Easement to Sunrise Power Company, LLC for Transmission Facilities.

Application 04-01-016

**ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING PACIFIC GAS AND
ELECTRIC COMPANY TO COMMENT
ON THE TIMING OF APPLICATION**

Summary

On January 15, 2004, Pacific Gas and Electric Company (PG&E) filed an application for Commission authority to grant an easement to Sunrise Power Company, LLC (Sunrise) for transmission facilities. On January 14, 2004, Administrative Law Judge (ALJ) Walwyn issued an ALJ ruling severing the issue of the Sunrise contracts from Rulemaking (R.) 01-10-024, and deferring its consideration. In light of ALJ Walwyn's ruling, PG&E is asked to comment on whether its application concerning Sunrise should be withdrawn until further resolution of the issue by the Commission.

Background

As part of R.01-10-024,¹ San Diego Gas & Electric Company (SDG&E) conducted a Grid Reliability Capacity Request for Proposals (RFP). Following the completion and analysis of the RFP, SDG&E filed a motion in R.01-10-024 for approval to enter into six new electric resource contracts that were the winning bids from the RFP, and for approval of the cost recovery and ratemaking mechanisms associated with the contracts.

One of SDG&E's proposals was for a 10-year Power Purchase Agreement (PPA) with Calpine Corporation (Calpine), beginning on June 1, 2007. While SDG&E doesn't need the energy from the Calpine PPA for the grid reliability capacity addressed in its RFP, Calpine does present a number of benefits for the region's long-term resource needs and the State's need for new, clean, and efficient generation infrastructure. However, in order to make the Calpine PPA viable, SDG&E wants the Department of Water Resources (DWR) contract with Sunrise reallocated from SDG&E to PG&E.

However, there is also a need for the Commission to expedite a decision on SDG&E's motion concerning the six new electric resource contracts. SDG&E alleges that it needs to know the upfront standards and criteria by which the acceptability and eligibility for rate recovery of the recommended proposals will be prior to execution of the transactions.

At a Prehearing Conference (PHC) on October 31, 2003, addressing the scheduling for hearings on SDG&E's RFP filing, there was discussion of bifurcating the Sunrise contract reallocation proposal to a separate procedural

¹ Rulemaking to establish policies and cost recovery mechanisms for generation procurement and renewable resource development.

track from the rest of the recommended proposals in SDG&E's RFP filing in order to expedite the proceeding. ALJ Walwyn's January 14, 2004, ruling severed the Sunrise contract from the RFP hearing, so as to allow the RFP filing to proceed as quickly as possible without having to address the additional Sunrise contract issues. As part of that ruling, Judge Walwyn noted that "in Commission Proceeding Application (A.) 00-11-038, the final allocation methodology for the DWR revenue requirements for 2004 and, likely, for future years as well, is currently being litigated. A Commission decision resolving this question is expected within the next several months. Since the outcome of this proceeding will affect the allocation of the costs to [PG&E, SDG&E, and Southern California Edison Company (Edison)] of the DWR contracts, this outcome could possibly affect whether SDG&E must in fact consider Commission approval of the Sunrise allocation as a condition precedent to the approval of the Calpine PPA."²

ALJ Walwyn continued in the ruling "[s]ince a delay of several months in addressing the proposed reallocation of the Sunrise contract in this proceeding will not adversely affect SDG&E's deadlines, and since a resolution of the DWR contract cost allocation question in Commission proceeding A.00-11-038, *et al.* could have a direct impact on the question of whether the Commission either needs to, or should, approve the proposed reallocation of the Sunrise contract to PG&E, it will be an efficient use of the resources of the parties to this proceeding

² January 14, 2004, ALJ ruling, in R.01-10-024, p. 5.

to delay hearings on this one question until the Commission issues its decision on the DWR contract cost allocation question in Docket A.00-11-038.”³

Discussion

PG&E filed its application for authority to grant an easement to Sunrise for transmission facilities on January 15, 2004, one day after ALJ Walwyn issued the ruling severing the Sunrise contract issue from the SDG&E RFP filing, and deferring the issue until after the Commission issues its decision in A.00-11-038. PG&E’s application arguably raises implementation issues that must be addressed after the Commission decides the reallocation question, assuming it decides in favor of reallocation. However, the reallocation of this contract is a contested issue. That fact, coupled with the ALJ’s decision to delay its consideration momentarily, raises the question whether it is prudent and efficient decisionmaking to begin the processing of PG&E’s application at this time, or whether the better course of action is to require that the application be re-filed at a later appropriate date. PG&E is therefore directed to comment on whether their application of January 15, 2004, A.04-01-016, should be withdrawn at this time, and then refiled, after a decision issues in A.00-11-038.

This ruling will be served on the service list for both A.04-01-016 and R.01-10-024. PG&E’s comments are due within 30 days of the date of this ruling and should be served on both service lists. No other party is required to comment at this time. If any party wishes to reply to PG&E’s comments, reply comments will be due 15 days after PG&E’s comments are served.

The Commission will then issue a ruling as to whether A.04-01-016 proceeds forward at this time, or whether PG&E is asked to withdraw the

³ January 14, 2004, ALJ ruling in R.01-10-024, pp. 5 and 6.

application. Until the Commission determines whether or not the application proceeds, parties' obligation to file protests is suspended. The ruling following comments will address whether or not protests should be filed, and if so, when they are due.

IT IS RULED that:

1. PG&E is to file comments within 30 days of the date of this ruling addressing whether A.04-01-016 should proceed forward at this time, or be withdrawn pending a Commission decision in A.00-11-038.
2. Reply comments are not required, but will be allowed, and are due 15 days after PG&E's comments are filed.
3. Parties' obligation to file protests is suspended pending a Commission ruling on the continuance of A.04-01-016.

Dated January 26, 2004, at San Francisco, California.

/s/ Carol Brown
Carol Brown
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Pacific Gas and Electric Company to Comment on the Timing of Application on all parties of record in this proceeding or their attorneys of record.

Dated January 26, 2004, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.